

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CESARIO VIZCARRA MEDINA,

Plaintiff,

v.

CDCR, et al.,

Defendants.

Case No. 1:22-cv-00764-EPG (PC)

ORDER AUTHORIZING ISSUANCE OF
SUBPOENA *DUCES TECUM* AND
SETTING DEADLINES

ORDER DIRECTING CLERK TO SEND
PLAINTIFF ONE COPY OF FORM AO 88B
AND ONE COPY OF FORM USM-285

Cesario Medina (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On September 30, 2022, the Court issued a screening order. The Court gave Plaintiff thirty days to either: “a. File a First Amended Complaint; b. Notify the Court in writing that he does not want to file an amended complaint and instead wants to proceed only on his Eighth Amendment excessive force claim against Doe ISU Officers 1-3; or c. Notify the Court in writing that he wants to stand on his complaint.” (ECF No. 6, p. 11). The Court noted that if Plaintiff “files a statement that he wants to go forward only on [his Eighth Amendment excessive force claim against Doe ISU Officers 1-3], the Court will authorize the issuance of a subpoena so that Plaintiff can seek document(s) that identify the Doe Defendant(s).” (*Id.* at 2). On October 13, 2022, Plaintiff filed a notice indicating that he wants to proceed with his Eighth Amendment excessive force claim against Doe ISU Officers 1-3. (ECF No. 7).

Accordingly, the Court will authorize the issuance of a subpoena *duces tecum*. When completing the subpoena form, Plaintiff should only request documents that may assist him in identifying Doe ISU Officers 1-3.¹ He should also identify with specificity the documents he is seeking and the person or entity he is seeking the documents from. Once Plaintiff has completed and returned form AO 88B and form USM-285, the Court will direct the United States Marshals Service to serve the subpoena.² The Court notes that it may limit Plaintiff's request for production of documents.

Plaintiff has 120 days from the date of service of this order to file a motion to substitute named defendants in place of Doe ISU Officers 1-3. Failure to file a motion to substitute by this deadline may result in the dismissal of the unidentified defendants.

Accordingly, IT IS ORDERED that:

1. The Clerk of Court is directed to send Plaintiff one copy of form AO 88B and one copy of form USM-285;
2. Plaintiff has thirty days from the date of service of this order to complete and return form AO 88B and form USM-285; and
3. Plaintiff has 120 days from the date of service of this order to file a motion to substitute named defendants in place of Doe ISU Officers 1-3. Failure to file a motion to substitute by this deadline may result in the dismissal of the unidentified defendants.

IT IS SO ORDERED.

Dated: **October 14, 2022**

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

¹ The Court is not opening discovery generally. It is only allowing Plaintiff to subpoena documents that may allow him to identify Doe ISU Officers 1-3.

² If after being served with the subpoena, the responding person or entity fails to respond or objects to providing documents, Plaintiff may file a motion to compel. The motion must be filed with the Court and served on the responding person or entity.